

Appl. No. 10/616,956  
Amdt. Dated December 22, 2004  
Reply to Office Action of November 2, 2004

**REMARKS/ARGUMENTS**

Claims 1 to 24 have been replaced by new Claims 25 to 32 submitted herewith. We confirm that no new subject matter has been added by this amendment.

In new claims 25 to 32, each of the Examiner's rejections have been addressed. It is respectfully submitted that each of the rejections has been rendered moot by the amendment. However, to the extent that the amended claims submitted herewith contain the same features as any of the cancelled claims 1 to 24, the rejections are discussed in detail below.

In particular, new Claim 25 is clearly directed to an outdoor feeder apparatus for wild birds. As will be discussed below, none of the cited references US 4,181,612; 4,384,547; and 5,533,466 in any manner teaches or suggests features for outdoor use for wild birds; nor could any embodiment of any of these three patents be considered suitable for such use – indeed the features described in each of these patents clearly contraindicate use for wild birds.

Further, as will be discussed below, US 5,549,075 neither teaches nor suggests the features of the present invention as claimed in new Claim 25 submitted herewith.

Still further, having regard to the differences between the present invention, as defined in the new claims submitted herewith, and the disclosures in the prior art citations, it is submitted that the present invention, as claimed in new independent Claim 25 (and thus the dependent Claims 26 to 32) cannot be found to be anticipated by US 4,181,612; nor obvious in light of any of the four citations, alone or in combination.

The Examiner's objections will be considered in the order presented in the Office Action.

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#### **Rejection under 35 USC 112**

Claim 18 has been cancelled and its wording no longer appears in the claims. This objection is therefore moot.

#### **Rejections under 35 USC 102**

The Examiner has rejected claims 1-4, 7-10, 19-22 as anticipated by US 4,181,612, to Trail.

Although each of these claims has been cancelled, the reference will be considered in relation to new Claims 25 to 32 submitted herewith.

The cited reference is for an apparatus for servicing a domestic bird cage, the principal features of which are that bird waste materials pass from the base of the cage, to a filtration zone in an aquarium, and water from the aquarium can be pumped up to the bird cage to flush the floor of the cage.

In contrast, the present invention relates to an outdoor feeder apparatus for wild birds. It is submitted that Trail does not disclose the features of the subject invention as claimed in new Claim 25 submitted herewith. In particular, the cage is required to be enclosed, for indoor domestic use; the waste is not, as suggested by the Examiner, collected in an identifiable container, but in a filtration bed within the general filtration system of the aquarium. Further, the Trail reference does not disclose or suggest a cover which provides support and protection for a feeder means, and protection over a platform so that wild birds can freely enter and leave the feeding zone, while feed crumbs or husks can be collected through the downward path into the collection container, the additional benefit of the cover being the reduction of rain water collection.

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It is therefore submitted that new Claim 25 is not anticipated by Trail, and that the device as described by Trail manifestly could not be used for the purpose to which the subject invention is directed.

As each of new Claims 26 to 32 are dependent on new Claim 25, it is submitted that none of these claims could be anticipated by Trail.

**Rejection under 35 USC 103 based on US 4,181,612, to Trail**

The Examiner has rejected Claims 5, 6, 16 – 18 as being obvious in light of Trail.

As noted above, each of these claims has been cancelled. However, this objection will be discussed in relation to the new claims submitted herewith to the extent feasible.

Firstly, as discussed above, Trail does not disclose the features of the subject invention as claimed in new Claim 25. It should be noted that the limitations added by original Claims 5 (fixing means for base), 6 (bottomless base), 16 – 18 (saucer-shaped platform and its diameter) have not been repeated in the same manner in the new claims submitted herewith, or at all.

Thus, it is submitted that the limitation of fixing means for the base of the device claimed in Claim 25 (as in new dependent Claim 28), as directed to an outdoor device which might be fixed to a deck or similar structure, could not be obvious from the fact that an indoor domestic bird cage (or the aquarium beneath) might be fixed in some manner.

Similarly, there is no suggestion that Trail could comprise a bottomless base (as in Claim 6, or new Claim 27) – either for the cage (in which case the waste would fall into the aquarium water with disastrous consequences for the fish) or for the aquarium itself which would be inoperable without a watertight bottom.

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The limitations of Claims 16 to 18 have not been included as such in new Claims 25 to 32. New Claim 32 provides a clear limitation directed to the selection of appropriate dimensions to the platform so that unwanted animals (such as squirrels) which are capable of climbing the support means would not be able to reach around the overhang of the platform and gain access to the feed zone. As now defined, it is clear that this claim cannot be regarded as obvious in light of Trail, which is in no manner directed or relevant to the problem of outdoor wild animals resolved by the embodiment described in new Claim 32.

The closure of each of the cage and aquarium of Trail is mandated by their purpose, not being directed at excluding intruders but at retaining the caged wildlife within the enclosure. These mutually distinct purposes of necessity mandate completely different structural and functional features, such that the present invention cannot be obvious from Trail.

**Rejection under 35 USC 103(a) based on US 4,181,612 to Trail in view of US 5,549,075 to Golden**

The Examiner has rejected Claims 11 – 15 as being obvious based on Trail in view of Golden.

Each of these claims has been cancelled. This group of claims was directed to the use of telescopic support means for the apparatus of the original (and previously amended) Claim 1. It is submitted that although new Claim 26 adds the limitation of a telescopic tube, it is defined in such manner that it is clearly distinguishable from the tube of Golden. In particular, the telescopic tube of Golden is of necessity of gradually increasing diameter in the **upwards** direction, to allow for the feed to be pumped upwards to the feed supply zone, whereas the gradual increase in diameter for the invention is in the **downwards** direction, to allow the waste to pass down to the collection container. While telescopic tubes are indisputably not new either at the date of Golden or the present

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application, it is clear that the addition of such feature to the inventive features of new Claim 25, resulting in the limitations of Claim 26, cannot be found obvious in this manner.

More importantly, it is submitted that it would not be obvious to combine the telescopic power operated upward feeding means of Golden with the indoor domestic bird cage/aquarium combination of Trail. As Trail does not disclose or suggest the features of the present invention as claimed in new Claim 25, it is submitted that this objection is moot.

**Rejection under 35 USC 103(a) based on US 4,181,612 to Trail in light of US 4,384,547 to Mattox**

The Examiner has rejected original Claim 23 as obvious based on Trail in light of Maddox.

This claim has been cancelled and not replaced in the new Claims 25 to 32 submitted herewith, rendering the objection moot.

**Rejection under 35 USC 103(a) based on US 4,181,612 to Trail in light of US 5,533,466 to Kohus and US 5,549,075 to Golden**

The Examiner has rejected original Claim 24 as obvious based on Trail in light of Kohus and Golden.

This claim has been cancelled and not replaced in the new Claims 25 to 32 submitted herewith.

To the extent that new Claim 25 contains some of the features defined in cancelled Claim 24, it is submitted that it would not be obvious to combine the teachings of Trail (as to an indoor bird cage and aquarium combination for domestic use) with the teachings of

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Kohus (an indoor bird cage providing a viewing means for observing a caged bird) and the teachings of Golden (an outdoor bird feeder with an automatic feed level sensor and pump means).

In particular it is submitted that none of these three references, alone or in combination, disclose, teach or even remotely suggest the features of new independent Claim 25, or new Claims 26 to 32 dependent thereon.

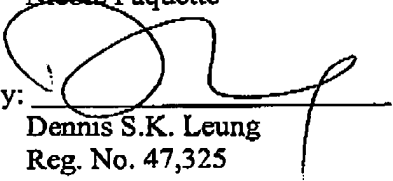
**Conclusion**

Applicant therefore respectfully requests that each of the citations be withdrawn in light of the amended claims 25 to 32 submitted herewith.

We look forward to receiving early confirmation of the same by the prompt issuance of a Notice of Allowance for this application.

Should any further fees or payments be necessary for entry of this amendment and further prosecution of this application, the undersigned hereby authorizes the Commissioner to debit and/or credit our Deposit Account No. 16-0600.

Respectfully Submitted,  
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